AO 108 (2/90) Application for Seizure Warrant

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

United States District Court

Southern DISTRICT OF California

In the Matter of the Seizure of
(Address or brief description of the property or premises to be seized)

1991 Teal Honda Accord
Bearing California Plates: 4LYP555
VIN: 1HGCB7669MA111207

APPLICATION AND AFFIDAVIT FOR SEIZURE WARRANT

CASE NUMBER: '08 MJ 0294

I Jose D. Morales being duly sworn depose and say:

I am a(n) U.S. Border Patrol Senior Patrol Agent and have reason to believe
Official Title

that in the Southern District of California,
there is now certain property which is subject to forfeiture to the United States, namely (describe the property to be seized)

1991 Teal Honda Accord
Bearing California Plates: 4LYP555
VIN: 1HGCB7669MA111207

which is a vehicle/conveyance which was used in the commission of a violation of Title 8, United States Code, Section 1324 (a) (1) (B) and is therefore subject to seizure.

Concerning a violation of Title 8 United States Code, Section(s) 1324 (b).
The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are as follows:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Signature of Affiant

Sworn to before me, and subscribed in my presence

2/1/08 at San Diego, California
Date City and State

BARBARA L. MAJOR
U.S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT

UNITED STATES OF AMERICA)
)
) ss
)
SOUTHERN JUDICIAL DISTRICT OF CALIFORNIA)

I, Jose D. Morales, being duly sworn, hereby depose and say:

1. I am a Senior Patrol Agent with the United States Border Patrol (hereinafter referred to as "USBP") Department of Homeland Security, Bureau of Customs and Border Protection. I have been an agent for 4 years and 11 months. I am currently assigned to the Asset Forfeiture Office for the San Diego Sector USBP. I make this affidavit based upon information related to me through oral and written reports, which I have reviewed regarding this, and other investigations reported to me directly or indirectly by USBP agents and other law enforcement agents.

2. This affidavit is made in support of a seizure warrant for a 1991 Teal Honda Accord (hereinafter referred to as "Honda Accord") bearing California, license plate number 4LYP555, vehicle identification number (VIN) 1HGCB7669MA111207, which was used in the commission of a violation of Title 8, United States Code, Section 1324(a), transportation of undocumented aliens. This seizure warrant is sought pursuant to Title 8, United States Code, Section 1324(b), and Title 8, Code of Federal Regulations, Section 274.4.

3. On Sunday, January 27, 2008, at approximately 9:35 a.m., USBP Senior Agent Christopher M. Jones, of the Chula Vista Intelligence Unit (hereinafter referred to as "CVIU"), was patrolling an area known as Cal Pine in the Chula Vista Border Patrol Stations area of responsibility in the Southern District of California. Cal Pine is an industrial site and is located approximately 1 mile

east and 1 mile north of the Otay Mesa Port of Entry, on the United States / Mexico international border. Agent Jones was watching this area due to an increase of reports of alien smuggling activity and an increase of illegal alien traffic.

4. At this time, Agent Jones was positioned about a mile north of Cal Pine in an unmarked USBP Vehicle when he noticed a teal 4-door, Honda Accord enter into the southern entrance of Cal Pine. Agent Jones thought that this was suspicious because Cal Pine is closed on Sundays. Agent Jones drove southbound on Alta Road past the southern entrance of Cal Pine and noticed the Honda Accord exiting and continue north on Alta Road. Agent Jones got a good look at the driver, a thin, young Mexican male with very short hair, approximately 22 years old. Agent Jones also noticed the driver was accompanied by a single visible passenger, seated in the front passenger seat. Agent Jones radioed to other USBP units. He described his observations, and alerted the other USBP units that the Honda Accord and its occupants may be engaged in the smuggling and transportation of undocumented aliens. USBP Agent Juan Herrera radioed that he was on a mountain overlooking Cal Pine, and that he would remain vigilant for the Honda Accord. Agent Jones passed by the Honda Accord again and noticed that it had entered the northern entrance of Cal Pine. Agent Jones then parked and waited in a secluded area nearby. Agent Herrera radioed that the Honda Accord was driving very slowly and stopping at bushes and storm drains along the northern entrance. The bushes and storm drains along the northern entrance are just north of the international border and are well known as popular hiding spots for undocumented aliens waiting to be picked up by smugglers and transporters in their vehicles. Agent Herrera then radioed that the Honda Accord was leaving Cal Pine and heading southbound on Alta Road.

5. Agent Jones began to follow the Honda Accord at a distance great enough not to alert the driver. Agent Jones then radioed for a marked USBP unit to initiate a vehicle stop on the Honda Accord. Agent Jones radioed that undocumented aliens may have loaded into the Honda Accord during the time he lost sight of the vehicle near Cal Pine. At approximately 09:45 AM, USBP Agent Leo Robinson, drove north on Enrico Fermi Drive and Airway Road. While doing so, he observed the Honda Accord approach the intersection of Alta Road and Otay Mesa Road. Once Agent Robinson reached the intersection of Enrico Fermi Dr. and Otay Mesa Road, he made a U-turn and positioned his marked USBP service vehicle on the westbound shoulder of Otay Mesa Road just east of Enrico Fermi Dr.

6. As the Honda passed Agent Robinson's location, he observed three occupants in the back seat attempting to conceal themselves. Agent Robinson followed the Honda Accord and attempted to initiate a stop by activating his emergency lights and siren. The Honda Accord pulled to the shoulder of the roadway and came to a stop. Agent Robinson pulled in behind the stationary Honda Accord, and stopped just aft of the vehicle. Immediately and without warning, the driver of the Honda Accord, accelerated rapidly and fled from Agent Robinson. The agent reactivated his vehicle's emergency lights and siren, and resumed pursuit of the Honda Accord. Agent Robinson notified USBP dispatch of the situation. USBP dispatch confirmed the Honda Accord was not reported as stolen. According to California Department of Motor Vehicle records, the registered owner of the Honda Accord was Oscar E. Arista, of Imperial Beach, California.

7. The Honda Accord fled from Agent Robinson at a high rate of speed, exceeding the posted speed limit, and continued west on Otay Mesa Road. The Honda Accord recklessly ran the red traffic light at the intersection of Enrico Fermi Drive and Otay Mesa Road. Moments later, the

driver then made an illegal u-turn at State Route 125 almost hitting a stationary vehicle at the stop light. The Honda Accord proceeded south on State Route 125, then east on State Route 905 toward the Otay Mesa Port of Entry. As the Honda Accord raced south toward the international border, the driver ran several red traffic lights, nearly hitting several vehicles. One vehicle at the intersection of Airway Road and State Route 905 was forced to drive off the roadway to avoid being struck. The Honda Accord then fled into Mexico, driving in the south bound lanes of Otay Mesa Port of Entry.

8. As the Honda Accord fled into Mexico, Agent Robinson notified the Mexican Immigration officials through his service vehicle loud speaker giving the description of the absconding Honda Accord. Acting quickly, the Mexican Immigration officers pursued the Honda Accord. Within moments, the Mexicans stopped the Honda Accord, detaining the driver and all passengers aboard. Agent Robinson requested and was given the drivers registration and license information. He also requested and was given information regarding the occupants. The Mexican Immigration officials reported the Honda Accord held a total of five occupants. The driver and front seat passenger were both confirmed to be United States citizens. The three passengers in the rear seat were Mexican nationals, with no legal authorization to enter or remain in the United States. The Mexican official determined that no violation of Mexican law occurred. Therefore, the occupants of the Honda Accord were not arrested. The occupants were released and the Honda Accord was returned to the possession and control of the driver.

9. During their journey in the United States, the three passengers in the rear seat of the Honda Accord were undocumented aliens. During the time the USBP agents were observing and pursuing the Honda Accord in the United States, the driver and front seat passenger were engaged in transporting undocumented aliens in violation of Title 8, United States Code, Section

1324(a). The Mexican immigration officials on the scene further confirmed the driver of the Honda Accord was Oscar Eduardo Arista, the registered owner of the vehicle. He was further identified by his date of birth, November 30, 1986, and his California driver's license number "D8337232".

10. At the Chula Vista, California USBP station, a photograph of the registered owner of the vehicle was obtained from the California DMV. USBP Agent Jones positively identified the photograph of Oscar Eduardo Arista as the driver of the Honda Accord when it failed to yield.

11. Your affiant submits that the above-stated facts support the conclusion that the 1991 Honda Accord was engaged in the illegal transportation of undocumented aliens, in violation of Title 8, United States Code, Section 1324. Three undocumented aliens were briefly seen by a USBP agent as they attempted to hide in the rear seat of the Honda Accord, shortly before the vehicle failed to yield and fled into Mexico. When ordered to pull over and stop by a USBP agent in uniform and driving a marked USBP patrol vehicle, the driver of the 1991 Honda Accord refused to obey and fled. In doing so, the operator of the Honda Accord engaged in reckless driving at speeds that threatened the welfare of the motoring public. Your affiant submits the factual statement herein directly proves the 1991 Honda Accord, Bearing California, license plate number 4LYP555, vehicle identification number (VIN) 1HGCB7669MA111207, and its operators were involved in the illegal smuggling and transportation of undocumented aliens, in violation of, among other things, Title, 8 United States Code, Section 1324.

This seizure warrant is sought pursuant to Title 8, United States Code, Section 1324(b), and Title 8 Code of Federal Regulations, Section 274.4.

12. Based on my experience, I know it is common for traffickers of undocumented aliens to smuggle aliens into this country from Mexico and to transport aliens throughout this district

during the night, under cover of darkness. Aliens also frequently cross into the United States during under cover of darkness, during the night and early morning hours. Another popular practice relied upon by undocumented aliens and alien traffickers is to travel into and throughout this district when USBP shift changes occur. At this time, the Honda Accord is at large and could be located most anywhere in the Republic of Mexico or the United States. In my training and experience, it is quite likely the 1991 Honda Accord will again be pressed into service as an undocumented alien smuggling and transportation vehicle.

13. Based on the above information and observations, I believe there is probable cause to believe that the 1991 Honda Accord bearing California, license plate number 4LYP555, vehicle identification number (VIN) 1HGCB7669MA111207, was used in the transportation of undocumented aliens in violation of Title 8, United States Code 1324, and is therefore subject to seizure and forfeiture pursuant to Title 8, United States Code, Section 1324 (b), and Title 8, Code of Federal Regulations, Section 274.4. I request that the seizure warrant be valid 24 hours a day if the vehicle is found in a public place or is encountered while being operated on a public road during the night and early morning hours.

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14. Having signed this affidavit under oath, the affiant states that its contents are true and correct to the best of my knowledge, information and belief.

Dated: January 31, 2008

By: ______________________

Jose D. Morales, Agent

United States Border Patrol

San Diego Sector

Subscribed and sworn to

before me this 1st

day of February, 2008.

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United States Magistrate Judge

Affidavit in Support of Seizure warrant for a 1991 Honda Accord bearing California, license plate number 4LYP555, vehicle identification number (VIN) 1HGCB7669MA111207,